

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-150

COMMONWEALTH

vs.

LUAN MAXWELL.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The defendant, Luan Maxwell, was convicted of assault and battery on a police officer in violation of G. L. c. 265, § 13D. On appeal, arguing a lack of criminal responsibility, he challenges the denial of his motion for a required finding of not guilty. We affirm.

Background. We summarize the facts presented at the defendant's jury-waived trial in the light most favorable to the Commonwealth. On June 16, 2015, a housekeeper working at the Lindemann Center, a mental health facility, saw a tall black man, wearing a loose shirt, approach her in a hallway area. While touching his genitals and sticking his tongue out, he told the woman "that he needed sex." When she responded that she did not understand, the man told her to be quiet. The housekeeper ran away and contacted the police. On another floor of the

Lindemann Center, another housekeeper was cleaning one of the bathrooms when a black man of average height and wearing a crew neck shirt approached her, pushing her further into the bathroom. The man showed the woman his penis, pushing his body against her, saying "please, please." The man was blocking the doorway out of the bathroom, so the woman "ease[d] [her] way out of the bathroom little by little" in order to escape.

The State Police responded to the Lindemann Center for a report of a possible sexual assault. After taking the written statements of the two housekeepers who had interacted with the suspect, Trooper Brian Dunn went to the courtyard of the Lindemann Center, where other troopers had already detained the defendant. The defendant was "a little agitated" and rambling, but "wasn't screaming or anything like that." The defendant's hands were handcuffed behind his back. He was cooperative and compliant while he was placed in the police cruiser. During the ride, his behavior was the "[s]ame": "rambling" and "incoherent." Trooper Dunn had difficulty understanding the defendant's words.

At the police station, the defendant continued to be cooperative as officers assisted him in exiting the cruiser. Once he was outside of the cruiser, however, the defendant "lowered his shoulder and struck [the trooper] in the chest, pushed [him] back," and tried to run away. Two officers were

able to render assistance and bring the defendant to the ground. Because the defendant kicked the troopers from his position on the ground, he was held there for "a few minutes" until he calmed down. Later, inside the station, the defendant told an officer that he had smoked synthetic marijuana earlier that day.

The defendant was charged with kidnapping; lewd, wanton, and lascivious conduct; indecent assault and battery; assault and battery; and assault and battery on a police officer. He pleaded not guilty to all counts. Soon thereafter, the defendant was determined to be incompetent to stand trial by an examiner pursuant to G. L. c. 123, § 15 (b). A judge found the defendant not competent to stand trial and committed him to Bridgewater State Hospital (Bridgewater).<sup>1</sup> See G. L. c. 123, § 16. Approximately ten months later in April 2016, an examiner found that the defendant "currently possesses the abilities relevant to competence to stand trial." After a competency hearing, a judge also found him competent for trial.

Prior to trial, the defendant raised the defense of lack of criminal responsibility due to mental disease or defect under Mass. R. Crim. P. 14 (b) (2) (A), as appearing in 463 Mass. 1501 (2012). In a court-ordered, nonbinding criminal responsibility examination, the examiner opined that the defendant lacked

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<sup>1</sup> The defendant stipulated to the examiner's report and waived the right to a competency hearing.

culpability on the four charges pertaining to the attacks at the Lindemann Center.<sup>2</sup> However, the examiner made no recommendation as to the charge of assault and battery on a police officer.<sup>3</sup>

The indecent assault and battery charge was dismissed before trial. After the presentation of the evidence, the defendant moved for required findings of not guilty on the remaining four charges. The judge agreed and allowed the motion on three counts -- kidnapping; lewd, wanton, and lascivious conduct; and assault and battery -- because of insufficient evidence to prove identification. The motion was denied as to assault and battery on a police officer, and the defendant was found guilty on that charge. The defendant's appeal was timely.

Discussion. On appeal, the defendant argues that his motion for a required finding of not guilty was wrongly denied as to the charge of assault and battery on a police officer

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<sup>2</sup> The court has the authority under G. L. c. 123, § 15 (b), to order "observation and further examination" if "such observation and further examination are necessary . . . to determine whether mental illness or mental defect have so affected a person that he is . . . not criminally responsible for the crime or crimes with which he has been charged."

<sup>3</sup> As to that charge, the examiner explained that he could not make an assessment of the defendant's capacity to appreciate the wrongfulness of his conduct because the defendant denied committing the assault entirely. Nonetheless, the examiner wrote that the defendant's desire to avoid apprehension and arrest suggests that during the police assault he may have had some capacity to conform his conduct to the requirements of law. Conversely, the examiner also found the defendant's "aggressive reaction to being arrested would be consistent with his history of violence when acutely ill."

because the Commonwealth failed to prove criminal responsibility. He places special emphasis on the strength of the testimony of the defendant's expert witnesses. When reviewing a denial of a motion for a required finding of not guilty, we assess the evidence in the light most favorable to the Commonwealth to determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt" (citation omitted). Commonwealth v. Latimore, 378 Mass. 671, 677 (1979).

"A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law" (citation omitted). Commonwealth v. McHoul, 352 Mass. 544, 546-547 (1967). When a defendant raises lack of criminal responsibility as a defense and there is trial evidence tending to support that defense, it is the Commonwealth's burden to prove beyond a reasonable doubt that the defendant was sane at the time the conduct occurred. Commonwealth v. Lawson, 475 Mass. 806, 811 (2016).

"The Commonwealth may prove criminal responsibility through the inferences arising from the circumstances of the offense, including evidence that the defendant planned the offense, acted on a rational motive, made rational decisions in committing the offense and in avoiding capture, and attempted to conceal the offense or his or her role in the offense. The Commonwealth also may prove

criminal responsibility through admissible evidence of the defendant's words and conduct before, during, and after the offense, including evidence of malingering." (Citations omitted.)

Id. at 816. Additionally, "[a] trier of fact may reject the testimony of experts that a defendant lacked criminal responsibility and may infer sanity from the defendant's conduct and the facts of the crime." Commonwealth v. Keita, 429 Mass. 843, 846 (1999).

On this record, viewing the evidence in the light most favorable to the Commonwealth, we conclude there existed sufficient evidence regarding the defendant's behavior before, during, and after the assault for a rational trier of fact to find that the Commonwealth carried its burden. During his criminal responsibility interview, the defendant stated that he had covered his face and moved swiftly to avoid detection while entering a secured area of the Lindemann Center.<sup>4</sup> He added that "he had been reproached before that about being in that restricted area, that he had been warned previously." The defendant also stated that he fled from the Lindemann Center security officers because he "didn't want to go to jail." A trier of fact could reasonably conclude from this evidence that

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<sup>4</sup> The defendant was warned that statements made during the court-ordered examination are not privileged. See Commonwealth v. Lamb, 365 Mass. 265, 270 (1974).

the defendant was able to appreciate the criminality of his conduct.

When he was being placed into the police cruiser by police, the defendant was rambling yet cooperative, and he was "[the] [s]ame" when riding to the police station. It was only after he was removed from the cruiser by the police, arguably the first moment he had to escape, that the defendant escalated his conduct and the assault took place. See Keita, 429 Mass. at 848-849. After he was brought into the station, the defendant was again cooperative and cogently answered questions throughout the booking process. A trier of fact could reasonably conclude that these facts support an inference that the defendant was able to conform his conduct to the law.

Likewise, looking beyond the narrative facts of the assault, the reports and testimony from the defendant's two expert witnesses were far less conclusive than the defendant construes them to be. The defendant's first expert witness, Dr. Robert Mendoza, admitted that it was difficult to ascertain the defendant's state of mind at the time of the assault, given that his interview with the defendant occurred approximately one year after the event.<sup>5</sup> Dr. Mendoza instead relied upon

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<sup>5</sup> Dr. Mendoza testified in part,

"So the best analysis is contemporaneous notes, people closest to the time that can establish his mental status in

contemporaneous notes from the defendant's medical providers. Although sets of notes made before and after the incident memorialized the defendant's declining mental faculties, the most synchronous account did not.<sup>6</sup> Likewise, the defendant's second expert witness, Dr. Jeffrey Burl, declined to offer a "definitive opinion" on the defendant's criminal responsibility relative to the assault and battery on a police officer.<sup>7</sup> He also posited that the defendant may have possessed the capacity to understand wrongfulness because "[h]is very desire not to be arrested, to flee, suggests, you know, a desire to avoid apprehension and detention."

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terms of his understanding of what he was doing -- whether it was right or wrong, following the law, etc. Unfortunately, when you look at things a year and a half later -- he's now saying things that he didn't even remember a year before. So the farther away you get away from the event, the less you can rely on how he was thinking that day."

<sup>6</sup> Specifically, Dr. Mendoza cited notes from the defendant's psychiatrist from two days prior to the assault, his outreach worker's notes from one month prior to the assault, and a Bridgewater report from one month after the assault.

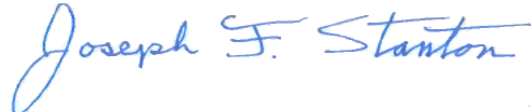
<sup>7</sup> By way of offering "some data to support a possible opinion," Dr. Burl recounted what the defendant told him about the police encounter. The defendant told him that upon exiting the police cruiser, he "attempted to flee" because he was "scared" and "bugging out" and denied pushing or assaulting the police officer. Dr. Burl found this to be related to the defendant's mental illness because he can be "very aggressive" and "anxious" when "acutely ill."



In sum, the evidence was sufficient to support a finding that the defendant was criminally responsible beyond a reasonable doubt.

Judgment affirmed.

By the Court (Desmond,  
Sacks & Lemire, JJ.<sup>8</sup>),



Clerk

Entered: July 10, 2019.

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<sup>8</sup> The panelists are listed in order of seniority.